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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]

DECISION

FOO/143259

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 20, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on September 11, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the Milwaukee County Department of Human Services (the agency) correctly determined Petitioner's FoodShare allotment to be \$91.00 effective September 1, 2012.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

By: [REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Katherine May

Milwaukee County Department of Human Services  
1220 W. Vliet Street  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On August 10, 2012, the agency processed a Six Month Report Form (SMRF) for Petitioner, using a check stub from 7/27/12. (Exhibit 5 – Case Comments)

3. On August 13, 2012, the agency sent Petitioner a notice of negative action indicating that effective September 1, 2012, his FoodShare benefits would be decreased from \$232.00 to \$91.00 per month. (Exhibit 2)
4. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on August 20, 2012. (Exhibit 1)
5. Petitioner's household size is 4, but the assistance group size is two, because Petitioner and his wife do not meet the non-financial eligibility criteria for FoodShare. As such, only the Petitioner's children receive FoodShare benefits. (Testimony of [REDACTED])
6. Petitioner pays rent of \$550.00 per month. (Testimony of [REDACTED])
7. During the first quarter of 2012 (January –March) Petitioner earned \$8424.25 and during the second quarter of 2012 (April –June) Petitioner earned \$9055.29. (Exhibit 9 – State Wage Record)

### **DISCUSSION**

To receive FoodShare benefits a household must have income below gross and net income limits though the gross income test does not apply where a household has a member over age 60. *7 Code of Federal Regulations (CFR), §273.9(b); FoodShare Wisconsin Handbook (FSH), § 1.1.4.* The agency must budget all income of the FS household, including all earned and unearned income. *7 CFR § 273.9(b); FoodShare Wisconsin Handbook (FSH), § 4.3.1.* The allotment calculation is based on prospectively budgeted monthly income using estimated amounts. *FSH, §4.1.1.* Thus, in this case, income from August 2012 was used to determine the allotment for September 2012 onward.

Once a household passes the gross income test the following deductions are applied ( *FSH, at § 4.6*):

- (1) a standard deduction - which currently was \$147 per month for a household of 1 during the time in question, but was raised to \$149, effective October 1, 2012. *7 CFR § 273.9(d)(1)*;
- (2) an earned income deduction - which equals 20% of the household's total earned income, *7 CFR § 273.9(d)(2)*;
- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, *7 CFR § 273.9(d)(3)*;
- (4) dependent care deduction for child care expenses, *7 CFR § 273.9(d)(4)*; and
- (5) shelter and utility expenses deduction - the deduction is equal to the excess expense above 50% of net income remaining after other deductions. *7 CFR § 273.9(d)(5).* There was a cap of \$459.00 on the shelter cost deduction, at the time in question, but effective October 1, 2012, the cap was raised to \$469. There is no cap on the shelter/utility deduction, if a household has an elderly, blind or disabled member. *FSH, §§ 4.6.7.1 and 8.1.3.*

The term 'disabled' is a term with a definition as to the FoodShare program:

#### **3.8.1.1 EBD Introduction**

An elderly individual is a food unit member age 60 or older.

A disabled individual is a food unit member who receives disability or blindness benefits from any of these programs: [SSA](#), [MA](#), [SSI](#) or SSI related MA, Railroad Retirement Board ([RRB](#)).  
*FSH, §3.8.1.1.*

Petitioner contested the agency's calculation of his monthly income, asserting that the agency should not have included a bonus that he receives once every three months. However, as indicated in the FoodShare

Wisconsin Handbook citation above, the agency must include all earned and unearned income in its calculations. Regularly recurring bonuses cannot be excluded from income. *FSH, §4.3.2.2.*

The agency was not able to produce a copy of the paystub upon which it based its calculations, nor was Petitioner able to provide copies of those paystubs. As such, the best information regarding Petitioner's income is the State Wage Record contained in Exhibit 9.

During the first quarter of 2012, Petitioner earned \$9055.29 and in the second quarter, Petitioner earned \$8424.25. This totals \$17,479.54 for the first six months of 2012. This averages out to be \$2913.26 per month ( $\$17,479.54 \div 6$ ).

Because Petitioner and his wife are not eligible for FoodShare benefits, his income is deemed and pro-rated among the food group members as follows, per *FSH §4.7.5 and 4.7.5.1*:

$$\$2913.26 \text{ monthly earned income} - 20\% (\$582.65) = \$2330.61$$

$$\$2330.61 \div 4 \text{ members in the Food Unit/household} = \$582.65$$

$$\$582.65 \times 2 \text{ assistance/Food Group members} = \$1165.30$$

The \$1165.30 is considered unearned income for the children. Thus, the allotment for September 2012 should have been calculated as follows:

|  |  |
|--|--|
| \$1165.30 gross income                     | \$275.00 rent (pro-rated for the children)               |
| -\$147 standard deduction                  | +\$444.00 utility allowance -\$0 earned income deduction |
|  | - \$509.15 (50% of \$1018.30 net income)                 |
| <hr/> \$1018.30 net income                 |  |
| -\$209.81 excess shelter/utility deduction | <hr/> \$209.81 excess shelter/utility deduction          |
| <hr/> \$808.49 net income                  |  |

An assistance/Foodshare group with net income of \$808.49 is eligible for \$124 in benefits. *FSH, §8.1.2*

### **CONCLUSIONS OF LAW**

The agency did not correctly determine Petitioner's FoodShare allotment for September 2012 onward. Petitioner's FoodShare allotment should have been \$124 per month.

**THEREFORE, it is**

**ORDERED**

That the agency issue FoodShare benefits to Petitioner in the amount of \$124 per month, effective September 1, 2012, if Petitioner's children are otherwise qualified for benefits. The agency shall take steps to do this within 10 days of this decision.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

## **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

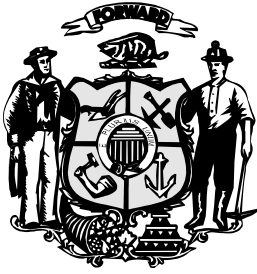
The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 5th day of October, 2012

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Mayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals

c: Milwaukee County Department of Human Services - email  
Department of Health Services - email



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on October 5, 2012.

Milwaukee County Department of Human Services  
Division of Health Care Access and Accountability